IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

WA.No. 2689 of 2007

AGAINST THE JUDGEMENT IN WPC.10973/2007 Dated 10/10/2007

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APPELLANT/1ST RESPONDENT IN THE WP:

THE CHADAYAMANGALAM GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.B.MOHANLAL

RESPONDENTS: PETITIONER AND 2ND RESPONDENT IN THE WP:

1.RAJAN K.,
CONVENOR, BENEFICIARY COMMITTEE, (VELANMUKKU THANNIPURAM ROAD)
CHADAYAMANGALAM GRAMA PANCHAYAT,
RESIDING AT PUTHENVILA VEEDU,
MADANNADA, POONKODU,
CHADAYAMANGALAM P.O.,
KOLLAM.

2.THE PROJECT OFFICER,
DISTRICT RURAL DEVELOPMENT AGENCY,
DISTRICT PANCHAYATH,
KOLLAM.

R1 BY ADV. SRI.K.SIJU KAMALASANAN &
SRI.PRATEESH

R2 BY SENIOR GOVERNMENT PLEADER SMT.K.MEERA.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.M.JOSEPH, J.

W.A.No.2689 of 2007

Dated, this the 14th day of November, 2007

JUDGMENT

H.L.Dattu, C.J.

Challenging the correctness or otherwise of the orders passed by the learned Single Judge in W.P.(C) No.10973 of 2007 dated 10-10-2007, the first respondent in the writ petition has presented this writ appeal.

(2). In the course of our order, we would be referring to the parties as arrayed in the writ petition.

(3). The first respondent is the Grama Panchayat. It had entrusted the construction of a road work in the Grama Panchayat area to the petitioner. According to the petitioner, he has completed the work which was entrusted to him and the respondents have paid only the sum of Rs.50,000/- and the balance amount of Rs.4,50,000/- is still payable by the Grama Panchayat. Expressing his financial difficulties, the petitioner was before this Court in W.P.(C) No.10973 of 2007. The main relief that was sought for by the petitioner was to direct the Grama Panchayat and the Project Officer to pay him the sum of Rs.4,50,000/- with interest from the date of passing of the final bill. By way of interim relief, the petitioner had sought for a direction to the respondents in the writ petition to pay the balance bill amount with interest, pending disposal of the writ petition.

(4). The Court, while entertaining the writ petition, had ordered notice to the respondents by special messenger. The matter was posted before the Court for the second time on 02-04-2007. Since the respondents

were not present, the learned Single Judge has passed an interim order literally granting the main relief sought for by the petitioner. The interim order passed by the learned Single Judge is as under:

> *"Service complete. Even though the respondents have been served with special messenger, they did not enter appearance. There will be an interim order directing respondents 1 and 2 to pay the amounts due to the petitioner within 10 days of receiving a copy of this order."*

(5). The first respondent, thereafter, had filed two counter affidavits dated 9-4-2007 and 10-8-2007, to modify the interim orders passed by the Court. The learned Single Judge without noticing the objections raised in the counter affidavit has disposed of the writ petition by his order dated 10th October, 2007, and in that he has merely confirmed the interim orders passed by him on 02-04-2007. Aggrieved by the order so passed by the learned Judge, the first respondent in the writ petition is before us, in this appeal.

(6). Adv. Sri. B.Mohan Lal, learned counsel appearing for the appellant would submit, firstly, that, the learned Judge was not justified in granting the interim prayer to the petitioner, since the interim prayer and the main prayer in the writ petition were one and the same. Apart from that, the learned counsel would submit that, the learned Judge, while issuing the interim prayer and confirming the interim prayer while disposing of the writ petition, has not applied the principles laid down by the Full Bench of this Court in the case of ***State of Kerala Vs. Anil (2002 (1) KLT 371 (FB)***.

(7). The learned counsel appearing for the writ petitioner sought to justify the interim and the final orders passed by the learned Judge.

(8). As we have already noticed, the petitioner in the writ petition had sought for a direction to the respondents to pay him the sum of Rs.4,50,000/- with interest from the date of passing of the final bill by the respondents. By way of interim prayer, the petitioner also sought for a direction to the respondents to pay him the balance bill amount with interest pending disposal of the writ petition.

(9). Interim relief is granted by this Court primarily in aid of the main relief. If the main relief and the interim relief are one and the same, in the normal course, no interim orders can be passed by this Court. In the instant case, as we have already noticed, the main prayer and the interim prayer in the writ petition were one and the same. The learned Judge, without hearing the respondents, ought not have passed any interim order.

(10). Secondly, the learned Judge, while confirming the interim orders passed by his order dated 10-10-2007 has not applied the principles laid down by the Full Bench of this Court in the case of ***State of Kerala Vs. Anil (2002 (1) KLT 371 (FB)***. In para 20 of the judgment, this Court has observed as under:

> *" While the reference was pending before the Larger Bench, certain directions had been issued in the matter of payment of the bills on 'first done first paid' basis. It is made clear that those orders passed by the Larger Bench will be a guideline for the State in the matter of payment of the bills and it will be open to the respective Benches*

to issue appropriate orders, if required and if found necessary, suitably varying those general directions in the interest of justice. Therefore, answering the reference as stated above, we send back all the cases to the respective Benches for final orders in the matter."

(11). In view of the aforesaid discussion, in our opinion, it is difficult to sustain the orders passed by the learned Judge. Therefore, we pass the following:

ORDER

(i). The Writ Appeal is allowed.

(ii). The orders passed by the learned Judge dated 10-10-2007 and the interim orders passed on 02-04-2007 are set aside.

(iii). The matter is now remanded back to the learned Judge, to hear the respondents in the writ petition and pass appropriate orders, in accordance with law.

(12). In view of the order passed in the appeal, I.A.No.909 of 2007 is closed.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.M.JOSEPH)
JUDGE

MS/DK.